IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1967

NO. 648

NEWELL H. SMITH, JR.,
Petitioner,

Versus

NOBLE DRILLING CORPORATION,
Respondent.

PETITIONER'S REPLY BRIEF

May it please the Court:

Respondent's opposition to the application herein requires petitioner's brief reply in two respects:

1. Respondent (at p. 5 of its opposition) is patently in error when it implies and then asserts that petitioner has received "full satisfaction" for his injuries; and

2. Respondent (at p. 12 of its opposition) apparently admits that petitioner's application presents an important question of maritime law; it says:

> "Underlying the question the Supreme Court is here called upon to determine is the question what is the admiralty rule to be applied in [restricted release personal injury cases]."

FULL SATISFACTION

Respondent's assertion that petitioner has received "full satisfaction" for his injuries in the form of the settlement which he effected with his former employer and its insurer has no basis in the record of this case.

There has never been a trial of any aspect of quantum; the amount of damage which petitioner sustained as a result of his injuries has never been adjudicated by either Court or jury.

Indeed, Judge Cassibry's decision quite plainly did not purport to decide the amount of petitioner's damage. Solely upon the basis of the *Romero* case, Judge Cassibry held:

> ". . . that a monetary settlement coupled with a dismissal of claim against one alleged tortfeasor . . . will bar prosecution of all claims against any other alleged tortfeasor, *regardless of whether or not the amount received in said settlement actually constitutes full compensation for plaintiff's damage;* . . ." (Petitioner's Appendix "A", p. 10) (Emphasis added)

Petitioner has never represented, either in the instant application or in any of the Courts below, that he is entitled to a "double recovery" of damages for the injuries which he sustained on December 11, 1962. All that he has ever contended, and all that he now contends, is that he is entitled to "full recovery" for these injuries. His quarrel with the decisions of which review

is here sought is that they have, as a matter of law, denied him his day in Court and his opportunity, against the un-released parties allegedly liable to him, to prove the full amount of his damages. That opportunity is all that petitioner, by his application, seeks to acquire.

THE QUESTION PRESENTED

In his original application for certiorari (pp. 2 & 3) petitioner represented to this Honorable Court that his application presented only one question:

> "Under the General Maritime Law of the United States, if a seaman is injured by the alleged joint conduct of his employer and a third party, may he settle with his employer and effectively reserve and retain his rights against the third party?"

Respondent (at p. 12 of its opposition) apparently concedes that petitioner's application does present an important question of maritime law; it states:

> "The underlying question the Supreme Court is here called upon to determine is the question what is the admiralty rule to be applied in such a case."

Respondent (at pp. 12 & 13 of its opposition) apparently seeks to urge that this Honorable Court should adopt "the strict common law rule" in maritime personal injury cases and should hold that under no circumstances may an injured claimant settle with one

alleged joint tortfeasor and reserve his rights against another.

Aside from the fact that "strict common law rules" have curried little favor with this Honorable Court in matters maritime, a cursory review of current authorities leaves little doubt that the original common law rule of "automatic" release of all parties allegedly liable is almost *passé*.

Indeed, it has been held that the "federal rule" is contrary to the so-called "common law rule," apparently even in the absence of a specific reservation such as is present in the instant case. *United States v. Hess*, 154 F. 2d 291 (CCA 3, 1946). It has also been held, in a closely analagous factual situation, that the release by a claimant of his FELA (45 U.S.C.A. §51 et seq.) employer does not automatically operate as a release of an "independent tortfeasor." *Husky Refining Co. v. Barnes*, 119 F. 2d 715 (CCA 9, 1941). The same result was reached by the same Court where the release of an employee specifically reserved the claimant's rights against his employer, the United States. *Friday v. United States*, 239 F. 2d 701 (CCA 9, 1957).

The respondent (at p. 13 of its opposition) has referred this Honorable Court to the annotation contained in 73 ALR 2d 403, et seq.

The second section of the annotation reads as follows:

"The original common-law rule is to the effect

> that the release of one joint tortfeasor releases all, even if there is an express reservation of the releasor's rights against the tortfeasors who are not parties to the release. This rule has often been based on the view that there can be but one compensation for a joint wrong and that the cause of action is satisfied once the injured party is paid for his injury by one of the joint tortfeasors. The rule has been vigorously attacked by lawwriters. It has been described as merely a 'surviving relic of the Cokian period of metaphysics.' It tends to defeat the fair expectations and intentions of the parties to the release. It may be noted that all but one of the Continental Legal Systems have flatly rejected the rule." 73 ALR 2d 407-408.

In view of the foregoing, if for no other reason, petitioner submits that this legal "relic" should not become a part of the General Maritime Law of the United States.

CONCLUSION

For the foregoing reasons, as well as those previously set forth, this application for certiorari should be granted; the decisions below should be reviewed; this Honorable Court should hold that the restricted release given by petitioner to his former employer preserves his rights against respondent; and this matter should be remanded to the Supreme Court of Louisiana with directions to accord petitioner his day in Court.

All of the foregoing is

Respectfully submitted,

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Certificate

I, the undersigned member of the Bar of this Honorable Court, do hereby certify that copies of the attached Reply Brief on behalf of petitioner have been served upon the respondent, Noble Drilling Corporation, by delivering the same to its attorney, George V. Baus, Esq., in the offices of Adams & Reese, Attorneys at Law, 847 National Bank of Commerce Building, New Orleans, Louisiana, this day of January, 1968.

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